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In re Application of
William J. Devlin et al
Application No. 09/827,045
Filed: April 5, 2001
Attorney Docket No. DCS-9119 CIP

OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition under 37 CFR 1.78(a)(3), filed October 21, 2002, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of prior-filed nonprovisional Application No. 09/725,621, filed November 30, 2000.

The petition is **DISMISSED AS MOOT**.

A petition under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000.

The instant pending nonprovisional application was filed on April 5, 2001, and was copending with Application No. 09/725,621, at the time of filing, from which priority is claimed. While a reference to the prior-filed nonprovisional application was not included in an ADS or in the first sentence of the specification following the title, reference nevertheless was made in the transmittal letter filed with the above-identified application.

The current procedure where a claim for priority under 37 CFR 1.78(a)(2)(i) is not included the first sentence of the specification or in an ADS but does appear either in the oath or declaration or a transmittal letter filed with the application and the Office notes the claim for priority, no petition will be required to accept a late claim for priority. This is because the application would have been scheduled for publication on the basis of the information concerning the claim submitted elsewhere in the application within the time period set forth in 37 CFR 1.78(a)(2)(ii). However, on the other hand, if the USPTO does not note the claim for priority to the nonprovisional application in the oath or declaration or transmittal letter submitted with the

application, a petition will be required to accept a late claim for priority under 37 CFR 1.78(a)(3).¹ In the instant case, the Office noted the claim for priority of nonprovisional Application No. 09/725,621, in the transmittal letter submitted with the application, as shown by its inclusion on the filing receipt.

In view of the above, the \$1,280 petition fee submitted is unnecessary and will be refunded to petitioner's deposit account in due course.

Any questions concerning this decision on petition may be directed to Karen Creasy at (703)305-8859. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being forwarded to Technology Center AU 1743 for processing the amendment filed October 21, 2002 and for consideration by the examiner of the claim under 35 U.S.C. § 120 and 37 CFR 1.78(a)(2) for the benefit of the prior-filed nonprovisional Application No. 09/725,621 filed on November 30, 2000.



Frances Hicks

Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

¹ Note 66 Federal Register 67087 at 67089 (Dec. 28, 2001), effective December 28, 2001.